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Application Number	09/828,068
Filing Date	April 6, 2001
First Named Inventor	Moon, Yong-Hwan
Group Art Unit	1638
Examiner Name	Stuart Baum
Attorney Docket Number	018941-001400US

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## ENCLOSURES (check all that apply)

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Remarks

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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm and Individual name	Townsend and Townsend and Crew LLP Matthew E. Hirsch	Reg. No. 47,651
Signature		
Date	October 21, 2002	

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TOWNSEND and TOWNSEND and CREW LLP

By: Joy M. Marshall

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Yong-Hwan Moon et al.

Application No.: 09/828,068

Filed: April 6, 2001

For: NUCLEIC ACIDS THAT  
CONTROL REPRODUCTIVE  
DEVELOPMENT IN PLANTS

Examiner: Stuart Baum

Art Unit: 1638

AMENDMENT

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Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Office Action mailed September 27, 2002, Applicants hereby elect with traverse the claims of Group I (claims 1-5, 7-10, 12-16 and 18-20).

According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, the MPEP at 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. Applicants respectfully submit that examination of the claims in Groups I-II would not create an undue burden and respectfully request withdrawal of the restriction requirement in this case.

The Examiner has divided the claims into groups depending on whether the reading frame is in a sense (Group I) or antisense (Group II) orientation. There does not appear to be any reason for this restriction.


First of all, claims 1-5 do not necessarily include a promoter and therefore do not recite "sense" or "antisense" constructs. Therefore, at the least, claims 1-5 should be examined in either restriction group.

Second, introduction of either sense or antisense constructs can result in a reduction of polypeptide expression in plants. For example, sense suppression (now commonly referred to as RNA interference or RNAi) can occur when sense constructs are introduced into plants. This technology is commonly used to suppress gene expression in plants. Thus, the Examiner's assertion that the sense orientation "is used to upregulate or increase activity" is only partly true. Either type of construct can be used to suppress expression. Therefore, it is unclear why antisense constructs and uses thereof justify a different restriction group.

Third, Applicants note that in the related application (09/415,946, filed 10/08/99, now U.S. Patent No. 6,376,751, issued 04/23/02) directed to the *Arabidopsis* *EMF* gene sequence, the Examiner considered antisense constructs together with sense constructs during the examination of the parent application.

Accordingly, Applicants respectfully request consolidation of Groups I-II.

Respectfully submitted,



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